Supreme Court, U. S.
FILED
JUL 5 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1978

No. 78-36

VIRGINIA W. LUCOM, *Petitioner*

v.

DAVID L. REID, ETC., et al., *Respondents*

On Appeal From the Supreme Court of Florida

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

PAUL J. FOLEY
710 Pennsylvania Bldg.
Washington, D.C. 20004
Attorney for Petitioner

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Constitutional and Statutory Provisions Involved	3
Statement of the Case	7
Federal Issues Raised	9
Reason for Granting	10
Conclusion	13
Appendix A	1a
Appendix B	8a
Appendix C	9a
Appendix D	12a
Appendix E	13a

TABLE OF CITATIONS

Cases:

Brinkerhoff-Faris Trust v. Hill, 281 U.S. 673, at 681	10, 12
Dade County v. Slater, 194 So.2d 587 (Fla. 1966)	12
Sioux City v. Dakota County, 260 U.S. 441 at 446	11
Southern Bell Telephone v. County of Dade, 275 So.2d 4 (Fla. 1973)	12
Sproul v. Royal Palm Yacht Club, Inc., 143 So.2d 900	12
Warth v. Seldin, 422 U.S. 490 at 501-2	7

Page

STATUTES:

28 U.S.C. § 1257(3) 2

Federal Constitutional

Amendment XIV, Section 1 3

Federal Statutes

42 § 1985 ..... 3, 8

42 § 1986 4

28 § 1341 ..... 2, 5, 8, 11

Florida Statutes

§ 194.011(2) 5, 7

§ 194.171 ..... 6, 10

IN THE

Supreme Court of the United States

OCTOBER TERM 1978

No.

VIRGINIA W. LUCOM, *Petitioner*

v.

DAVID L. REID, ETC., et al., *Respondents*

On Appeal From the Supreme Court of Florida

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Virginia W. Lucom prays that a Writ of Certiorari issue to review the decision of the Supreme Court of Florida entered in this case April 5, 1978.

OPINIONS BELOW

The opinion of the Supreme Court of Florida (Appendix D, infra, page 12a) is a per curiam opinion. It affirms the decisions of the Florida Fourth District Court of Appeals (Appendix C, infra, page 9a) which on Interlocutory Appeal it reverses and re-

mands with instructions to dismiss the complaint which motion to dismiss had been denied (order is Appendix B, infra, page 8a) by the trial court judge. None of the foregoing have been published in the report.

JURISDICTION

The order and judgment of the Supreme Court of Florida denying a rehearing of its per curiam order denying petition for certiorari was entered April 5, 1978 (Appendix E, infra page 13a) and this court's jurisdiction is founded on 28 USC 1257(3).

QUESTIONS PRESENTED FOR REVIEW

1. Where the Attorney General of the State of Florida was granted a motion to dismiss petitioner's federal suit (Petition 77-89) regarding real estate tax assessments and related civil rights action on his representation that Florida provided a "plain, speedy and efficient remedy (that) may be had in the courts of" that state, thus invoking 28 USC 1341 which then bars federal intervention, upon subsequent suit in Florida state court can the statute which was represented as providing the relief precluding federal interference be reinterpreted so as to bar petitioner's state action?

2. On a motion to dismiss complaint alleging a void assessment is it denial of due process arbitrarily to enforce one condition precedent to suit while interpreting other sections in pari materia of the same statute (F.S.194.171) inapplicable to void assessment when statute makes no such distinction?

3. Can a twenty-fold disparity in real estate taxes between petitioner's unimproved land and abutting, adjoining and similarly zoned land be maintained despite the equal protection clause of the federal constitution?

4. On a motion to dismiss where federal constitutional denial of due process and equal protection are well pleaded with supporting factual allegations, can the state court completely ignore same?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FEDERAL CONSTITUTIONAL

Amendment XIV . . . Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, *without due process of law; nor deny* to any person within its jurisdiction the *equal protection of the laws.* (Emphasis added.)

FEDERAL STATUTES

42 § 1985. Conspiracy to interfere with civil rights—Preventing officer from performing duties

> (3) If two or more persons in any State or Territory conspire or go in disguise on the highway or in the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under

the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right of privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 § 1986. Same; action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any

party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of the action has accrued.

28 § 1341. Taxes by States

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State. June 25, 1948, c.646,62 Stat. 932.

FLORIDA STATUTES

§ 194.011 (2)

On or before approval of the assessment roll by the Department of Revenue, or upon order of the commission or court pursuant to s. 195.098, as appropriate, each property appraiser shall notify by first-class mail each person subject to real or tangible personal ad valorem taxes of the assessment of each taxable item of real property and tangible personal property, as the item appears on the assessment roll, which he proposes to increase from the previous year's assessment. The notice required above shall contain the dollar value of the prior year's assessment and the current assessed value as determined by the property appraiser. However, such notice shall not be required when such increased assessment is not greater than the value declared by the taxpayer on his return. Amended by Laws 1973, c.73-172, § 11 eff. July 1, 1973; Laws 1976, c.76-234, § 1.

§ 194.171 Circuit court to have original jurisdiction in tax cases

(1) The circuit courts have original jurisdiction at law of all matters relating to property taxation. Venue is in the county where the property is located.

(2) No action shall be brought to contest a tax assessment after sixty days from the date of assessment being contested is certified for collection under section 193.122(2).

(3) Before a taxpayer may bring an action to contest a tax assessment, he shall pay to the collector the amount of the tax which he admits in good faith to be owing. The collector shall issue a receipt for the payment, and the taxpayer shall file the receipt with his complaint.

(4) No action to contest a tax assessment may be maintained unless all taxes on the property which the taxpayer in good faith admits to be owing, including taxes assessed in years after the action is brought, are paid before they become delinquent.

(5) Pending actions to contest tax assessments shall be dismissed unless the taxpayer shall have paid to the collector all taxes on the property which he in good faith admits to be owing, including taxes assessed in years after the action is brought.

(6) The clerk of the circuit court shall, after deducting his statutory fee, pay to the collector all taxes which have been admitted to be due and have been deposited in the registry of the court in connection with pending actions to contest tax assessments. Formerly 194.151 and 194.171. Combined and amended by Laws 1972 c.72-239, § 1, eff. July 1, 1972; Laws 1974, c.74-234, § 6, eff. July 1, 1974.

STATEMENT OF THE CASE

Being a case remanded by the Appellate Court with instructions to grant defendants' motion to dismiss, it is axiomatic that "For purposes of ruling on a motion to dismiss for want of standing (or jurisdiction) both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of complaining party; e.g. Jenkins v. McKeithem, 395 U.S. 411, 421-2 (1969) (parenthetic matter added)"; *Warth v. Seldin,* 422 U.S. 490 at 501-2.

Thus the indisputable facts of the case alleged in the complaint (Appendix A, infra, page 1a) are summarized as follows:

Petitioner, a citizen of Maryland, in 1952 bought about 545 acres of unimproved contiguous land in Palm Beach County, Florida, which was and still is unimproved and zoned "agriculture" and on which assessments and taxes rose slowly until 1973 when it was assessed at $490,000. Without the advance notice required by law (Florida Statutes 194.011(2)) and without change in zoning the assessment was increased 2231% or over twenty-two times to $10,933,400 for the year 1974, the year at issue, while all adjoining, abutting and similarly situated and zoned land remained at 1973 levels or about twenty-two times less. For 1975 the petitioner's said land was assessed at $3,298,020 or 70% less than for 1974 although there was no change in zoning or use.

Without compensation the bulk of petitioner's land for 1974 was officially classified as a park, which made it virtually unsaleable and nonuseable for any normal private use. Various county and state officials con-

spired to defraud petitioner by frustrating even any planning for the normal development of the property or public services for same.

There being no adequate state remedy, petitioner brought a suit for relief and damages in the U.S. District Court (Southern District, Florida) under 42 USC 1985 on which said court granted the same defendants' motion to dismiss because it related to assessments and the defendants' assured it that Florida provided a "plain, speedy and efficient remedy" thus invoking 28 USC 1341 as a bar to said suit. The federal district court's opinion which is based on the hoax of Florida's providing such a remedy was affirmed by the Fifth Circuit per curiam and resulted in Petition #77-89 being filed in the U.S. Supreme Court which has been denied, but as to which Petitioner is filing contemporaneously with the filing of this petition from the Florida courts proving said dismissal was based on a cruel misrepresentation, a motion for leave to file an attached motion for reconsideration of Petition #77-89.

Examination of the petitions in these related cases clearly establishes the federal suit's dismissal was based on the misrepresentation and deceit of the existence of a state remedy while the state action was dismissed by reinterpretation of a statute (from a traditional interpretation on which the Florida trial judge based his denial of defendants' motion to dismiss (opinion in Appendix B, infra, p. 8a, to the new appellate court version) all of which results in a complete denial of due process and equal protection as guaranteed by the federal constitution, and raises the most serious of the ethical standards of Florida officials' counsel including those of its Attorney General.

FEDERAL ISSUES RAISED

The federal issues were raised in the petitioner's First Amended Complaint (Appendix A, infra, page 1a) more particularly in these paragraphs thereof:

> 9. Defendant DAVID L. REID, under color of law, intentionally, individually, grossly and arbitrarily discriminated against Plaintiff by increasing the assessment on Plaintiff's property in the Tax year 1974 some twenty two times over the Tax year 1973, despite the fact that there had been no improvement of the property or change in its use or zoning classification. Such an increase in the assessed value of Plaintiff's assessment contitutes a fraud and deprives Plaintiff of her right to equal protection of the laws and due process of law as guaranteed by the Constitution of the United States. Further, scores of parcels of abutting, adjoining or nearby property, with identical zoning and use are assessed for Tax year 1974 at about one-twentieth of that of Plaintiff's property. See Exhibit A attached, and incorporated herein by this reference.
>
> 17. The 1974 assessment on Plaintiff's property is (A) void as being made in violation of controlling law (B) so obviously and flagrantly excessive as to clearly impute, as a matter of law and fact to Defendant REID an intention to arbitrarily discriminate against the plaintiff (C) violative of Plaintiff's federal constitutional rights to equal protection of the laws and due process of law, and
>
> 22. Counsel for Defendant J. ED STRAUGHN, Executive Director of the Florida Department of Revenue represented to the local United States District Court as an inducement to the latter's dismissal of a comparable federal suit that this honorable Court provided a plain speedy and effi-

cient remedy for this Plaintiff in the circumstances of this case. Whereupon said federal suit was dismissed on said grounds.

The trial Florida judge denied the motion to dismiss the said complaint and entered an order accordingly (Appendix B, infra, page 8a) from which an Interlocutory Appeal was taken urging dismissal on a reinterpretation of Florida Statute 194.171 subsections (3) and (4) requiring strict compliance with same as a condition precedent to suit although the complaint alleged a void assessment and facts supporting said void status. The Fourth District Court of Appeal of the State of Florida reversed the trial court and remanded the case with directions to dismiss the complaint (Appendix A, infra, page 1a.), having failed and refused to consider the said federal issues raised. Petitioner appealed from said appellate order and also filed a petition for writ of certiorari and/or appeal with the Supreme Court of Florida which denied same without hearing and per curiam (App. D, infra, p. 12a).

The Florida courts ignored the federal issues although well pleaded, contrary to holding in *Brinkerhoff-Faris Trust v. Hill,* 281 U.S. 673, at 681 quoted infra.

REASON FOR GRANTING

(a) Mindful of the great national concern regarding the impact of real estate taxes (e.g. Proposition 13 in California) the court should exercise its general power of supervision by reviewing officials outrageous conduct in (1) zoning petitioner's land a "park" without compensation (2) increasing real estate tax by 2000% or twenty times without giving required

notice (3) effectively denying any private usage of the land and (4) procuring dismissal of civil rights—assessment suit based thereon by representing to the federal district court that 28 USC 1341 barred suit because "a plain, speedy and efficient remedy" was available in the state courts (all of which is set out in related case Petition 77-89 and in which petitioner is now filing motion for leave and rehearing) and then when state law suit is filed asking for and, on appeal, getting a reinterpretation of the very statute represented to the federal court as the state remedy, under which reinterpretation petitioner's state suit is barred.

(b) Mindful of the great national concern regarding the ethics and abuses by the legal profession this court should exercise its general power of supervision by reviewing these cases wherein the State's highest legal officer causes to be dismissed in the federal court petitioner's civil rights—assessment suit on his representation that his state provided an adequate remedy which invoked 28 USC 1341 barring suit (Petition 77-89) and then proceeding to insist that the said state relief statute be reinterpreted, and on appeal getting such reinterpretation whereby the promised state relief was illusory, as is clearly established by the treatment of the case giving rise to this petition.

(c) With real estate tax a burning national issue and with no factual disputes in this case, the court has a unique opportunity to review and set guidelines which have drifted away from the standard of both *true value* and *uniform* with insistence on the latter as set in *Sioux City v. Dakota County,* 260 U.S. 411 at 446 and has degenarated in Florida for example, to having no safeguards of uniformity and, in fact,

misinterpreting it to be applicable only if *all* other taxpayers in a county are assessed at a different rate. (*Southern Bell Telephone v. County of Dade,* 275 So2d 4 (Fla. 1973) and *Dade County v. Slater,* 194 So2d 587 (Fla. 1966)) but denying all relief for lack of uniformity unless it is the one exception in the entire taxing district. *Sproul v. Royal Palm Yacht Club, Inc.,* 143 So2d 900.

(d) The concept and pattern of a State court's ignoring well pleaded issues of federal due process and equal protection issues should be stopped and the preservation of the rights reaffirmed as stated in *Brinkerhoff-Faris Trust v. Hill,* 281 U.S. 673 at 681 as follows:

> But our decision in the case at bar is not based on the ground that there has been a retrospective denial of the existence of any right or a retroactive change in the law of remedies. We are not now concerned with the rights of the plaintiff on the merits, although it may be observed that the plaintiff's claim is one arising under the Federal Constitution and, consequently, one on which the opinion of the state court is not final; or with the accuracy of the state court's construction of the statute in either the Laclede Land & Improv. Co. Case or in the case at bar. Our present concern is solely with the question whether the plaintiff has been accorded due process in the primary sense,—whether it has had an oportunity to present its case and be heard in its support. Undoubtedly, the state court had the power to construe the statute dealing with the state tax commission; and to re-examine and overrule the Laclede Land & Improv. Co. Case. Neither of these matters raises a federal question; neither is subject to our review. But, while it is for the state courts to determine the adjective as well as the

> substantive law of the state, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.
>
> * * *

Third. The court's finding of laches was predicated entirely on the plaintiff's failure to apply to the state tax commission. In view of what we have said, this ground is not sufficient independently to support the judgment. And, as the Supreme Court of Missouri did not decide whether the allegations of the plaintiff's bill were sustained by the proof, we do not inquire into the merits of the plaintiffs claim under the equal protection clause. The judgment is reversed and the case remanded for further proceedings not inconsistent with this opinion.

Reversed.

CONCLUSION

The complaint properly alleged a cause of action sounding in fraud, conspiracy, void assessments and denial of due process and equal protection guaranteed by the federal constitution, and should not have been dismissed by hiding behind hypertechnical constructions or avoided by per curiam opinions. The national interest in these issues is now extremely high and certiorari should be granted preferably in connection with a review of Petition 77-89.

Respectfully submitted,

PAUL J. FOLEY
710 Pennsylvania Bldg.
Washington, D.C. 20004
Attorney for Petitioner

APPENDIX

APPENDIX A

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA.
CIVIL DIVISION

Case No. 75-4093 CA (L) 01 B

VIRGINIA W. LUCOM, *Plaintiff*,

vs.

DAVID L. REID, as Property Appraiser (formerly Tax Assessor) of Palm Beach County, Florida;

ALLEN C. CLARK, as Tax Collector of Palm Beach County, Florida;

J. ED STRAUGHN, as Executive Director, Florida Department of Revenue;

PALM BEACH COUNTY BOARD OF TAX ADJUSTMENT;
CHARLES STAHMAN,
Defendants,

First Amended Complaint

1. This is an action to vacate the 1974 assessment of certain real property as void, to cancel tax certificates sold on same, and for other relief.

The Parties

2. The Plaintiff, VIRGINIA W. LUCOM, a citizen of the State of Maryland, brings this action as a private citizen over matter arising out of her ownership of about 545 acres of land situated in Palm Beach County, State of Florida.

3. Defendants,

(a) DAVID L. REID, as Property Appraiser (formerly Tax Assessor) of Palm Beach County, Florida;

(a) ALLEN C. CLARK, as Tax Collector of Palm Beach County, Florida;

(c) J. Ed Straughn, as Executive Director, Florida Department of Revenue;

(d) Palm Beach County Board of Tax Adjustment, in its official capacity.

(e) Charles H. Stahman, as Supervisor, Land Department Office of Property Appraiser (formerly Tax Assessor) Palm Beach County, Florida.

4. Plaintiff, during 1952, bought for about $55,000.00, approximately 545 of unimproved continguous real estate situated in Palm Beach County, and located west of Jog Road and both North and South of Forest Hill Blvd. in said county. The Plaintiff's land is now, and has always been unimproved, and has no utility service of any type. Said property is zoned "agriculture."

5. Plaintiff's property is contained in the nine parcels of land under the following Property Control Numbers used by the Property Appraiser, Defendant, David L. Reid:

1.	18	42	43	27	05	021	0150
2.	18	42	43	27	05	014	0040
3.	18	42	43	27	05	021	0070
4.	18	42	43	27	05	014	0260
5.	18	42	43	27	05	014	0370
6.	18	42	43	27	05	021	0010
7.	18	42	43	27	05	021	0390
8.	18	42	43	27	05	014	0440
9.	18	42	43	27	05	014	0032

6. For the Florida Property Assessment year 1973, with a tax day of January 1, 1973, Plaintiff's property was assessed at a value of approximately $490,000.00, or approximately $890.00 per acre.

7. For the Assessment year 1974, with a tax day of January 1, 1974, the Plaintiff's property was assessed at a value of $10,993,400.00, or approximately $20,000.00 per acre.

8. For the Assessment year 1975, with a tax day of January 1, 1975, the Plaintiff's property was assessed at a value of $3,298,020.00 or approximately $6,000.00 per acre, 30% of the assessment for 1974.

9. Defendant, David L. Reid, under color of law, intentionally, individually, grossly and arbitrarily discriminated against Plaintiff by increasing the assessment on Plaintiff's property in the Tax year 1974 some twenty two times over the Tax year 1974, despite the fact that there had been no improvement of the property or change in its use or zoning classification. Such an increase in the assessed value of Plaintiff's assessment constitutes a fraud and deprives Plaintiff of her right to equal protection of the laws and due process of law as guaranteed by the Constitution of the United States. Further, scores of parcels of abutting, adjoining or nearby property, with identical zoning and use are assessed for Tax year 1974 at about one-twentieth of that of Plaintiff's property. See Exhibit A attached, and incorporated herein by this reference.

10. Without compensation, present or prospective, most of Plaintiff's land was classified by the Palm Beach County Planning Board in its Land Use Map (see Exhibit B, pertinent parts annexed, and incorporated herein by this reference) for institutional use as a park. Said classification of Plaintiff's property has made it virtually unsaleable.

11. During the latter part of 1973 and during 1974, Defendant, Charles Stahman conspired with Defendant, David L. Reid and others presently unknown to Plaintiff to specially re-assess in a 'grossly discriminatory and outrageously unequal basis, as a class, only the newly annexed lands on the West side of the Town of Greenacres City, to which land the Plaintiff's land belongs, in furtherance of which plan, and under color of law, Defendant David L. Reid did raise the assessment of Plaintiff's property for 1974 by over twenty times, without notifying the Plaintiff by first class mail or otherwise notifying the Plaintiff, who

received no notice of increase in assessed valuation for the year 1974 as required by Florida Statute 194.011(2). The Plaintiff did not learn of same until she received her tax bill late in 1974. Further, Defendant, David L. Reid, in concert with public officials and their agents, known and unknown to Plaintiff conspired to deny Plaintiff any change in the zoning or use of her property and to impede, frustrate and prohibit any use of the Plaintiff's property for other than park or public institutional use as assigned it in the aforesaid Land Use Plan.

12. Despite the twenty fold increase in Plaintiff's assessment for 1974, the Town of Greenacres was not generally re-assessed for 1974 assessed value.

13. The Plaintiff's 1974 assessed value of about $20,000.00 per acre is about five to ten times that of acreage located in Greenacres and zoned R-2 (up to fifteen dwelling units per acre) and, land zoned for much higher economic use, and hence having higher market value, than land zoned "Agriculture"—one unit per every 5 acres—as is established by Non-Comparables Map, (Exhibit C, annexed hereto and incorporated herein by this reference) which shows the identifying assessment code, location, zoning and 1974 assessed value per acre of a score of parcels assessed far below that of the Plaintiff's property yet having zoning for a much higher use. There are no parcels so highly assessed as those in the aforesaid newly annexed properties West of Greenacres, to which Plaintiff's land belongs.

14. There is no other unimproved land zoned "Agriculture" in all of Palm Beach County which has been assessed at a value approaching 20,000.00 per acre for 1974.

15. Upon learning of the 1974 Tax Bill for her property, Plaintiff contacted the appraiser's office, providing it with maps (e.g. Exhibits A and C, hereto), legal arguments and citations with the further developments in furtherance of the aforesaid conspiracy

(a) Defendant Stahman prepared a report to cover up the conspiracy and attempt to justify same

(b) Defendant Reid, joined by new co-conspirators, decided to refuse corrective adjustments of the illegal assessments on the grounds that (A) it would not be politically expedient for him to do so and (B) on the feigned ground that he lacked authority (although it was called to his attention that subsequent to his certification of tax rolls in November, 1974, he issued over 1658 certificates of correction many of which were for incorrect values assessed).

(c) Defendant Reid denied Plaintiff a copy of, or access to the report identified in paragraph (a), supra.

(d) Defendant Reid refused to justify or explain to Plaintiff any basis on which her property was assessed for 1974.

(e) Defendant Reid then caused to be sent to Plaintiff letter attached as Exhibit D.

16. Plaintiff has tendered the amount she reasonably believes to be owing in good faith, as required by Section 194.71 Florida Statute. The tender of said amount has been rejected (see Exhibit E, annexed, and incorporated herein by this reference). Tender of same is made again herewith.

17. The 1974 assessment on Plaintiff's property is (A) void as being made in violation of controlling law (B) so obviously and flagrantly excessive as to clearly impute, as a matter of law and fact to Defendant Reid an intention to arbitrarily discriminate against the Plaintiff (C) violative of Plaintiff's federal constitutional rights to equal protection of the laws and due process of law.

18. Defendant Clark, has sold tax certificates for said properties on or about May 30, 1975. Each such certificate has been sold to Palm Beach County.

19. The Plaintiff's property produces no income.

20. Defendant STRAUGHN is hereby joined in this action for his failure to properly supervise Defendant REID, as required by law, and as principal revenue official of the State of Florida.

21. THE PALM BEACH COUNTY BOARD OF TAX ADJUSTMENT is named as a party because it could have corrected this illegal assessment if Plaintiff had received timely notice of same so as to have timely filed for review by that Defendant.

22. Counsel for Defendant J. ED STRAUGHN, Executive Director of the Florida Department of Revenue represented to the local United States District Court as an inducement to the latter's dismissal of a comparable federal suit that this honorable Court provided a plain speedy and efficient remedy for this Plaintiff in the circumstance of this case. Whereupon said federal suit was dismissed on said grounds.

WHEREFORE, Plaintiff prays that this Court will

A. Declare void the 1974 assessment of Plaintiff's property, and vacate same.

B. Cancel tax sale certificates issued on said propertries

C. Declare due and owing as 1974 taxes on said properties that amount which Plaintiff has tendered herewith, and

D. Award Plaintiff such other relief as is just, including costs of these proceedings.

Respectfully submitted,

PAUL J. FOLEY
Suite 710, Pennsylvania Bldg.
425 13th Street, N.W.
Washington, D.C. 20004
(202) 628-1111
Co-Counsel for Plaintiff

and

PREEFER & FRIEDRICH
208 North Dixie Highway
P.O. Box 3041
Lantana, Florida 33462
(305) 582-2606

By: .....
ANDREW I. FRIEDRICH,
Attorneys of Records for Plaintiff
Co-Counsel for Plaintiff

APPENDIX B

[Caption omitted in printing]

Order Denying Motions

This cause was presented on Motions to Dismiss and Strike filed by the various Defendants and addressed to Plaintiff's Amended Complaint. Plaintiff now alleges that the 1974 assessment is so obviously and flagrantly excessive as to clearly impute to Defendant an intention to arbitrarily discriminate against her. This is the language set forth in *Lake Worth Towers, Inc.* v. *Gerstung, 262 So. 2d 1.* Facts are alleged. Whether they support this contention would be a matter for the Court to determine at trial. Plaintiff further alleges that she did not receive notice of her increased assessment for 1974. This as a question of fact to be determined at the trial. Only at trial can it be determined if the evidence is sufficient to overcome the presumption that the appraiser did his duty. It is thereupon,

ORDERED AND ADJUDGED that all pending motions filed by the Defendants are denied. Defendants are allowed 30 days from date hereof in which to answer.

DONE AND ORDERED this 23rd day of September, 1976.
Copy furnished counsel

CULVER SMITH
Circuit Judge

Copy furnished counsel

APPENDIX C

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FOURTH DISTRICT JULY TERM 1977

Case No. 76-2205

DAVID L. REID, Property Appraiser of Palm Beach County;
ALLEN C. CLARK, Tax Collector of Palm Beach County;
J. ED STRAUGHN, Executive Director, Florida Department of Revenue;
PALM BEACH COUNTY BOARD OF TAX ADJUSTMENT,
Appellants,

v.

VIRGINIA LUCOM, *Appellee.*

Opinion filed August 2, 1977

Interlocutory appeal from the Circuit Court for Palm Beach County; Culver Smith, Judge.

Robert Lee Shapiro of Levy, Plisco, Perry & Shapiro, Palm Beach, for Appellant-David L. Reid.

Robert L. Shevin, Attorney General, and Harold F. X. Purnell, Assistant Attorney General, Tallahassee, for Appellant-J. Ed Straughn.

H. Michael Easley of Cone, Owen, Wagner, Nugent, Johnson & McKeown, and Larry Klein, West Palm Beach, for Appellant-Allen C. Clark.

R. William Rutter, Jr., County Attorney, and Charles P. Vitunac, Assistant County Attorney, West Palm Beach, for Appellant—Palm Beach County Board of Tax Adjustment.

Andrew Friedrich of Preefer & Friedrich, Lantana, and Paul J. Foley, Washington, D.C., for appellee.

DAUKSCH, J.

For our determination in this Interlocutory Appeal is an Order of the trial court denying the dismissal of a Complaint for equitable relief. Specifically the Plaintiff/Appellee seeks to have an assessment declared void alleging that the Property Appraiser, the Appellant here, arbitrarily discriminated against her in his assessment of her real property for the year 1974. Our jurisdiction is thru Fla.App.Rule 4.2 as this matter is one formerly cognizable in equity. *Dade County Land Development Corp. v. Dade County,* 157 So.2d 142 (Fla. 3d DCA 1963); Section 196.01; Florida Statutes (1967).

The Order denying the dismissal of the Complaint properly sets out that there are factual issues to be decided regarding the alleged improper assessment but as a part of the pleadings it is obvious that the Plaintiff failed to comply with Section 194.171(3) and (4), Florida Statutes (1975) in that she failed to tender to the Tax Collector the amount she admitted in good faith to be owing prior to instituting the lawsuit and before the payment of the taxes became delinquent. Therefore the court should have granted the Motion of the Tax Assessor to dismiss the Complaint. It was alleged that the Appellee tendered to the Appellant the amount she in good faith admitted owing on April 14, 1975. Under Section 197.016, Florida Statutes (1975) these taxes became delinquent on April 1, 1975. Section 194.171(3) and (4), Florida Statutes (1975) says that before an action to contest a tax assessment may be brought the taxpayer must pay to the collector the amount the taxpayer admits in good faith to be owing. The Tax Collector must issue a receipt for the payment and the taxpayer must file the receipt with his Complaint. The tender must be made before the taxes become delinquent. *Adler-Built Industries, Inc. v. Metropolitan Dade Co.,* 231 S.2d 197, 199 (Fla.1970); *Blake v. R. M. S. Holding Corp,* 341 So.2d 795 (Fla.3d DCA 1977); *Millstream Corp. v. Dade County,* 340

So.2d 1276 (Fla.3d DCA 1977); *Brooks v. Interlachen Lakes Estates, Inc.,* 332 So.2d 681 (Fla.1st DCA 1976).

Therefore the Order denying the dismissal of the Complaint is reversed and this cause is remanded with directions to dismiss the Complaint.

REVERSED and REMANDED with direction.

MAGER, C.J. and ALDERMAN, J., concur.

APPENDIX D

SUPREME COURT OF FLORIDA

Friday, February 17, 1978

VIRGINIA LUCOM, *Petitioner,*

vs.

DAVID L. REID, etc., ET AL., *Respondents.*

CASE NO. 52,541

DISTRICT COURT OF APPEAL, FOURTH DISTRICT
76-2205

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

OVERTON, C.J., ENGLAND, SUNDBERG, HATCHETT and KARL, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.
By: Judy Whittle
Deputy Clerk

TC
cc: Hon. Clyde Heath, Clerk
Hon. Culver Smith, Judge
Hon. John B. Dunkle, Clerk
Paul J. Foley, Esquire
Andrew I. Friedrich, Esquire
Charles P. Vitunac, Esquire
Christiansen, Jacknin & Myers
Cone, Owen, Wagner, Nugent,
Johnson & McKeown
Larry Klein, Esquire
L. M. Taylor, Esquire
H. Michael Easley, Esquire
Harold F. X. Purnell, Esquire

APPENDIX E

[Caption omitted in printing]

On consideration of the petition for rehearing filed by attorneys for petitioner, and reply thereto,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

A True Copy

TEST:

Sid J. White

Clerk, Supreme Court
By: Dublin Causseaux
Deputy Clerk

TC
cc: Hon. Clyde L. Heath, Clerk
Hon. Culver Smith, Judge
Hon. John B. Dunkle, Clerk
Paul J. Foley, Esquire
Andrew I. Friedrich, Esquire
Charles P. Vitunac, Esquire
Christiansen, Jacknin & Myers
Cone, Owen, Wagner, Nugent
Johnson & McKeown
Larry Klein, Esquire
L. M. Taylor, Esquire
H. Michael Easley, Esquire
Harold F. X. Purnell, Esquire